

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Appeal of the Audit
Involving:

OAH No. 2011090367

CINDY S.

Appellant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Respondent.

PROPOSED DECISION

Amy C. Yerkey, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California, on November 29, 2011.

Cindy S. and Jeffrey S., represented Appellant Cindy S.¹

Ruth Janka, Contract Administrator, represented North Los Angeles County Regional Center (NLACRC or Service Agency.)

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

ISSUE

The question to be decided is whether Appellant should reimburse Service Agency, in the amount of \$13,559.19, for services performed while the consumer resided out of state.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-24; Claimant's exhibit A (with 11 attachments).

¹ Initials are used to protect the privacy of Appellant and her daughter, a regional center consumer.

Testimonial: Dana Hart, Adult Supervisor, Case Management Department at NLACRC; Kim Rolfes, Chief Financial Officer, NLACRC; Claimant's father.

FACTUAL FINDINGS

1. This appeal arises from an audit of Appellant, a parent vendor, conducted by NLACRC. The findings of this audit were reviewed and upheld by the Department of Developmental Services (DDS).² Following the audit, NLACRC determined that Appellant should reimburse NLACRC the total amount of \$13,559.19, for Supported Living Services (SLS).

2. Appellant is the mother of S.S., an adult consumer of NLACRC. Since 1994, Appellant has been vendored to provide SLS to S.S.

3. In the fall of 2009 and summer of 2010, S.S. traveled to Colorado for several weeks to visit family and friends. Appellant did not accompany S.S., she remained in California. Appellant communicated with S.S. through various methods, including but not limited to the telephone, text messages, e-mail and Skype.³ Appellant also performed administrative functions, such as completing paperwork and researching opportunities for S.S. Appellant billed for these services, and NLACRC reimbursed her.

4. It is undisputed that Appellant did not provide direct services to S.S. It is also undisputed that NLACRC did not authorize any services for S.S. in Colorado.

5. The agreement for SLS services between Appellant and NLACRC stated that Appellant would receive “fringe benefits,” at a rate of 30 percent of the total monthly amount, in consideration for benefits such as vacation and healthcare. By this agreement, Appellant agreed to “[b]ill only for services which are actually provided to clients and which have been authorized by the referring regional center.” An updated agreement indicated that “parents will be responsible for all administrative costs associated with both of these programs.”

6. Initially Appellant contended that she was entitled to the reimbursement as vacation pay. At hearing, Service Agency presented evidence that

² DDS initially had a discrepancy in the total amount due as a result of the audit, but later corrected itself. The parties stipulated that the amount determined in NLACRC’s final audit, \$13,559.19, is correct.

³ Skype is a software application that allows users to make video and voice calls over the internet.

the agreement between Appellant and NLACRC contemplated vacation under the category “fringe benefits.” Thus, Appellant’s billing for vacation was a duplication of services. Appellant also argued that she should be reimbursed for completing administrative tasks. This argument fails because the SLS agreement provided that Appellant would assume all administrative costs. Appellant conceded that no direct services had been provided, but argued that doing collateral and indirect services is work that should be reimbursable as part of S.S.’s overall support.

7. S.S.’s parents emphasized that they have tried to live up to the spirit and the intention of the Lanterman Act. They have also been cooperative and a good partner with Service Agency. Their position is that services should be individualized to a consumer, and that S.S.’s trips to Colorado were necessary for her health and well-being. They believe it was appropriate to bill Service Agency because they were still providing S.S. with support even though she was out of state, and the support was indirect. They also emphasized that they were not trying to defraud the Service Agency and had no malicious intent, they thought they were doing what was right.

LEGAL CONCLUSIONS

1. Cause exists to sustain NLACRC’s audit findings, and DDS’s findings directing Appellant to reimburse NLACRC the total amount of \$13,559.19, pursuant to Factual Findings 1 through 7, and Legal Conclusions 2 through 6.

2. Welfare and Institutions Code section 4648.1, subdivision (e), provides that “[a] regional center . . . may recover from the provider funds paid for services when the department or the regional center determines that . . . [t]he services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

3. The regulations governing requirements for vendors and regional centers state that vendors may “[b]ill only for services which are actually provided to consumers and which have been authorized by the referring regional center.” (Cal. Code Regs., tit. 17, § 54326.)

4. As an SLS vendor, Appellant must provide direct services in order to be compensated for those services. (See Welf. & Inst. Code, § 4689; Cal. Code Regs., tit. 17, §§ 58614, 54349.) California Code of Regulations, title 17, section 54302, subdivision (a)(27), defines “direct services” as “hands-on training provided by the vendor in accordance with the requirements of the consumer’s Individual Program Plan.” Thus, unless Appellant provided in-person, hands-on services directly to S.S., she cannot bill for her work performed.

5. Given the foregoing, Appellant should not have billed NLACRC for the time period when S.S. resided in Colorado. Although Appellant performed valuable services by being available through electronic communication, this is not the

type of direct service contemplated by the current regulations. Appellant's administrative and vacation time are likewise not compensable, as they are not direct services within the meaning of the applicable laws.

ORDERS

1. Cindy S.'s appeal from the Final Audit of NLACRC, requiring Appellant's reimbursement of \$13,559.19 to NLACRC, is denied.
2. Appellant shall reimburse NLACRC the total amount of \$13,559.19.
3. Appellant shall make a reimbursement arrangement with NLACRC, pursuant to California Code of Regulations, title 17, Section 50705, subdivision (b).⁴

DATED: December 9, 2011

AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings

⁴ California Code of Regulations, title 17, section 50705, subdivision (b), provides for recovery of overpayments as follows:

(b) When the overpayment is due and owing, it shall be recovered by any of the following methods:

- (1) Lump sum payment;
- (2) Offset against current payments due;
- (3) A repayment agreement of not more than five years duration from the date the agreement is made;
- (4) Any other method of recovery available to and deemed appropriate by the Director [of the Department].